

WASHINGTON, DC -- Congresswoman Linda Sánchez, Chairwoman of the House Judiciary Subcommittee on Commercial and Administrative Law (CAL), issued the following opening statement today at the CAL Subcommittee legislative hearing on H.R. 4044, legislation that would give certain servicemembers relief from some bankruptcy requirements. Specifically, the bill would amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days.

“Since September 11th, 2001, nearly half a million members of the National Guard and Reserve have been called to serve in Iraq and Afghanistan. As you might imagine, these lengthy and often unanticipated deployments not only disrupt the lives of these servicemembers and their families, but can also lead to financial hardship. It’s estimated, for example, that up to 26 percent of National Guard members who are deployed experience money problems as a direct result of their deployment.

“You may also recall the very poignant testimony that we received at our hearing last May from a chapter 13 debtor about her financial circumstances. She explained how — after her husband, a member of the Army reserve, was called to active duty and deployed to Iraq — the family income decreased by more than \$1,000 per month, which, among other reasons, caused her and her husband to seek bankruptcy relief.

“One would think that our bankruptcy law would honor the special contributions of these brave men and women who make so many sacrifices to protect our Nation. Sadly, it does not.

“Exactly three years ago this very month, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act, which contained some of the harshest changes to consumer bankruptcy law in more than 25 years.

“One of the more draconian changes is the so-called “means test,” which requires debtors to prove their inability to repay their debts through a complex bureaucratic maze at the risk of having their cases dismissed for being an abuse of the system.

“The means test is particularly unfair to National Guard and Reserve members both as a matter of principle and practice. Here’s just one example. Servicemembers, while serving in Iraq or Afghanistan, typically receive higher compensation in the form of combat pay, while they incur fewer living expenses. When they return to the United States, however, they receive less pay and their expenses increase.

“The means test, nevertheless, requires a debtor to calculate his or her income based on the average monthly income that he or she received during the six-month period preceding the filing date of the bankruptcy case, rather than the debtor’s current income. As a result of the means test, a servicemember could appear to have higher net income and therefore be at risk of having his or her case dismissed for abuse. To overcome this presumption, the servicemember must then demonstrate “special circumstances,” which can be a burdensome undertaking.

“This is not the way our consumer bankruptcy laws should work. Our servicemembers deserve better.

“Today we are examining a proposed legislative remedy to this issue. H.R. 4044 would amend the Bankruptcy Code and create a narrow exception to the means test for a National Guard or Reserve Member if he or she is on active duty or performs a homeland defense activity after September 11, 2001 for at least 60 days, and for the first six months after completion of such service.

“Accordingly, I very much look forward to hearing from our witnesses. In particular, I commend my colleagues Representatives Schakowsky and Rohrabacher for their leadership on this issue.”